

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

INTERNATIONAL BROTHERHOOD OF)	
ELECTRICAL WORKERS, LOCAL UNION)	
No. 2)	
)	
Petitioner,)	
)	
vs.)	Public Case No. 77-029
)	
CITY OF CABOOL, MISSOURI)	
)	
Respondent.)	

FINDINGS OF FACT

This matter appears before the State Board of Mediation upon a Petition for Certification being filed by the International Brotherhood of Electrical Workers, Local 2, (IBEW), Petitioner, pursuant to Section 105.500 et. seq. RSMo. 1969, wherein it was requested that a determination be made with respect to issues concerning the appropriateness of a bargaining unit and majority representative status for the following unit:

"All employees of the City (Cabool)."

The Board has authority to hear and decide this case pursuant to Section 105.525 RSMo. 1969, which states in pertinent part:

"Issues with respect to the appropriateness of the bargaining unit
and majority representative status shall be resolved by the State
Board of Mediation . . ."

Upon notice to all parties, a hearing was conducted by the Board at the Bank Community Room, Cabool, Missouri. By agreement of all parties, a record of the proceedings was made before the Chairman of the Board and a copy of said record and any and all exhibits was forwarded to Richard Mantia, employee member and to Harry Scott, employer member of the Board, for a decision by a quorum of the Board.

[It should be noted that Robert Missey, a representative of the Petitioner and a member of the Board, did not confer in any manner concerning the decision of this case.]

The City of Cabool is a fourth class city with a population of 1,868. It is governed by an elected mayor and four councilmen who, along with the mayor, serve on the City Council. The City Council is the ultimate governing body of all city employees. The City is composed of seven departments which consist of approximately 22 permanent employees. In addition, there are employed 8 temporary individuals whose positions are funded under the Comprehensive Employee Training Act (CETA). The seven departments involved in this particular Petition are:

<u>Department</u>	<u>Employees</u>
Electrical	2
Parks and Pool	2
Water and Sewer	2
Street	2
Trash	2
Mechanical	2
Clerical	4 (includes city clerk)

City Administrator

The City is governed on a day to day basis by the City Administrator who is appointed by and directly responsible to the City Council. Ordinance No. 449, Council Bill No. 475 sets forth the duties, obligations, powers, and responsibilities of the Administrator. The Ordinance provides inter alia, the following:

Section 7 DUTIES

- A. Administrative Office: The City Administrator shall be the chief administrative assistant to the Mayor and as such shall be the administrative officer of the city government. Except as otherwise specified by ordinance or by the law of the State of Missouri, the City Administrator shall coordinate and generally supervise the operation of all departments of the City of Cabool.

- F. Personnel System: The City Administrator shall act as the personnel officer of the City and shall recommend an appropriate position classification system and pay plan to the Mayor and Board. The City Administrator, after consultation with department heads, shall approve advancements and appropriate pay increases within approved pay plans and position classification system. The City Administrator shall have the power to appoint and remove all employees of the City of Cabool.
- G. Policy Formulation: The City Administrator shall recommend to the Mayor and City Council adoption of such measures as he may deem necessary or expedient for the health, safety or welfare of the City or for the improvement of administrative services for the City.

Superintendent

Directly under the position of City Administrator is the position of Superintendent. This individual is responsible for the supervision of the Street, Parks and Pool, and Water and Sewer Departments. In fulfilling his responsibilities, the Superintendent does not perform manual duties but his primary concern is to insure that the work schedule is properly completed by the employees under his supervision.

Each of the aforementioned seven departments has a department head. These individuals spend a majority of their time during a regular week performing duties identical to that of the other employees within the department. It should be noted that the department heads attend a weekly meeting with the City Administrator for the purpose of discussing the following week's work schedule.

All of the department heads, with the exception of three, are paid by the hour and receive overtime equal to that of all other employees within their respective departments. The remaining three department heads are salaried and receive no overtime pay although they do work overtime with other employees. Other than the aforementioned facts, the department heads and the other employees within their departments enjoy the same terms and conditions of employment.

Clerical Department

The Clerical Department consists of three employees and the City Clerk. The duties of these employees and the City Clerk are primarily as follows: typing, processing of utility bills, payroll, collection of taxes, handling of customer inquiries and complaints and forwarding necessary work orders to the appropriate department. In addition to the aforementioned, the City Clerk attends all Council meetings, both open and executive sessions, and is responsible for maintaining all minutes of those meetings.

CONCLUSIONS OF LAW

The issue before the Board is whether the following unit is appropriate:

"All employees of the City (Cabool)."

Section 105.500 (1) RSMo. 1969, defines the appropriate unit as follows: "Appropriate Unit" means a unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned."

In determining what establishes a clear and identifiable community of interest, the Board recognizes such factors as prior bargaining history; centralization of management, particularly in regard to labor relations; extent of employee interchange; degree of independence or autonomy of facilities; differences or similarities in skills or functions of the employees; and geographical locations of the facilities in relation to each other. "Laborers' International Union of North America, Public Service Employees Local Union 45 v. University of Missouri, Public Case No. 76005, Page 6; Western Missouri Public Employees, Local 1812, et al v. Jackson County, Missouri (Department of Corrections), Public Case No. 90.

The Board has frequently stated that it will consider the following factors in determining whether or not an employee is a supervisor to be excluded from the proposed unit:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees.
2. The authority to direct and assign the work force.
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees.
4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employees.
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees.
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.
7. The amount of independent judgment and discretion exercised in the supervision of employees.

St. Louis Firefighters Association, Local No. 73, International Association of Firefighters v. City of St. Louis, Mo., Public Case No. 76-013; Western Missouri Public Employees, Local 1812 and Missouri State Council 72, American Federation of State, County and Municipal Employees vs. Jackson County, Missouri (Department of Corrections), Public Case No. 90.

City Administrator and Superintendent

It is not necessary to reiterate the responsibilities of the City Administrator and Superintendent in determining whether these positions should be considered supervisory. The competent and substantial evidence upon the whole record clearly indicates that all of the aforementioned factors are applicable to both of these positions. It is therefore the opinion of this Board that the positions of City Administrator and Superintendent are supervisory and should be excluded from the appropriate unit.

The department heads spend a majority of their time during the work week performing the same duties as the other employees within their department. Evidence has not been presented to this Board which would indicate that these individuals have

the authority to discharge, layoff, transfer, suspend, recall, promote, settle grievances, reward or discipline; attributes which this Board considers in determining whether an individual is supervisory. It is our opinion that the department head functions in what is traditionally known as a foreman or lead man position and should be included in an appropriate unit.

Clerical Department

Upon review of the evidence, it is the finding of the Board that there exists an interchange of activities between the clerical department and other departments within the City of Cabool, and therefore, individuals within the clerical department should be included in an appropriate unit. However, it appears from the record that the position of City Clerk in as much as she has privy to confidential material should be treated in a manner distinct from that of the other clerical employees, and therefore, be excluded.

It is the finding of the Board that there exists no dispute between the parties as to any other positions in the City of Cabool.

DECISION

Upon due consideration of the entire record by a quorum of the Board it is the decision of the Board that the following unit be deemed appropriate:

All employees of the City of Cabool in the following departments: Electrical, Parks and Pool, Water and Sewer, Trash, Mechanical and Clerical but excluding the City Administrator and Superintendent, City Clerk, Firemen, Policemen and all temporary employees working under a federal grant (CETA).

DATED THIS 13th day of June, 1979.

MISSOURI STATE BOARD OF MEDIATION

(SEAL)

/s/ Richard Mantia
Richard Mantia, Employee Member

/s/ Harry Scott
Harry Scott, Employer Member

/s/ Michael C. Horn
Michael C. Horn, Chairman (Resigned)

/s/ Conrad L. Berry
Conrad L. Berry, Chairman

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation among the employees in the unit found appropriate, as early as possible, but not later than sixty (60) days from the date below. The exact time and place will be set forth in the notice of the election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period, because they were out ill or on vacation. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether (or not) they desire to be represented for the purpose of exclusive recognition by International Brotherhood of Electrical Workers, Local Union No. 2.

It is hereby ordered that the respondent shall submit to the Chairman of the State Board of Mediation, as well as to the Petitioner, within ten (10) days from the date of receipt of this decision, an alphabetical list of the employees in the unit determined above to be appropriate who were employed during the designated payroll period.

DATED THIS 13th day of June, 1979.

MISSOURI STATE BOARD OF MEDIATION

(SEAL)

/s/ Richard Mantia
Richard Mantia, Employee Member

/s/ Harry Scott
Harry Scott, Employer Member

/s/ Michael C. Horn
Michael C. Horn, Chairman (Resigned)

/s/ Conrad L. Berry
Conrad L. Berry, Chairman